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WESTERN DISTRICT OF LOUISIANA

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF LOUISIANA

MONROE DIVISION

LACY KING, ET AL.

CIVIL ACTION NO. 06-0264

VERSUS

JUDGE ROBERT G. JAMES

DR. DONALD PERRY, ET AL.

MAG. JUDGE KAREN L. HAYES

RULING

Pending before the Court is a Motion to Dismiss [Doc. No. 13] filed by Defendant United States of America ("the Government"). On June 22, 2006, Magistrate Judge Karen L. Hayes issued a Report and Recommendation [Doc. No. 29] recommending that the Court grant the Motion to Dismiss, dismiss the claim against the Government without prejudice, and remand the remaining claims to state court for further proceedings.

On July 6, 2006, Defendant Madison Parish Hospital ("MPH") filed an Objection [Doc. No. 30] to the Report and Recommendation. MPH does not object to Magistrate Judge Hayes' conclusion and recommendations regarding the Government's Motion to Dismiss. Instead, MPH takes issue with Magistrate Judge Hayes' statement on page 7 of the Report and Recommendation that Defendant Dr. Donald Perry ("Perry") acted "in his capacity as an employee of MPH" when he treated decedent Beatrice King in the MPH emergency room on January 2, 2001.

The Court finds that Perry's employment status while working in the emergency room of MPH on January 2, 2001, is not an issue that before Magistrate Judge Hayes or this Court.

Therefore, any statement by Magistrate Judge Hayes on this issue is not binding on the state court on remand. Nevertheless, out of an abundance of caution, the Court DECLINES TO ADOPT Magistrate Judge Hayes' statement and leaves to the state court a determination of Perry's employment status on January 2, 2001.

MONROE, LOUISIANA, this 3 day of August, 2006.

A handwritten signature in black ink, reading "Robert G. James", written over a horizontal line.

ROBERT G. JAMES
UNITED STATES DISTRICT JUDGE